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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
| 10/567,980 | 04/24/2006 | Edwin Andries Gerard Van Der Vossen | 134770002US | 4140 |
| 23416 7590 01/19/2007 CONNOLLY BOVE LODGE & HUTZ, LLP P O BOX 2207 WILMINGTON, DE 19899 | | | EXAMINER ZHENG, LI | |
| | | | ART UNIT | PAPER NUMBER |
| | | | 1638 | |

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|--|------------|---------------|
| SHORTENED STATUTORY PERIOD OF RESPONSE | MAIL DATE | DELIVERY MODE |
| 31 DAYS | 01/19/2007 | PAPER |

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

| | | | |
|------------------------------|--------------------------------------|---|--|
| Office Action Summary | Application No. 10/567,980 | Applicant(s) VAN DER VOSSSEN ET AL. | |
| | Examiner Li Zheng | Art Unit 1638 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 27 April 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-32 and 34-43 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☐ Claim(s) _____ is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☒ Claim(s) 1-32 and 34-43 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

Restriction is required under 35 U.S.C. 121 and 372.

This application contains the following inventions or groups of inventions which are not so linked as to form a single general inventive concept under PCT Rule 13.1.

In accordance with 37 CFR 1.499, applicant is required, in reply to this action, to elect a single invention to which the claims must be restricted.

Group I, claim(s) 1-7 and 39, drawn to a method for generating the resistance of a plant to a plant pathogen of the phylum Oomyceta comprising increasing the activity of Rpi-blb2 protein in the plant.

Group II, claim(s) 8-14, 22, 37 (partial), 38 (partial), 40-43 (partial), drawn to a polynucleotide encoding Rpi-blb2 protein or a vector containing the polynucleotide.

Group III, claim(s) 15-17, 23-31, 37 (partial), 38 (partial), 40-43 (partial), drawn to a method for making a recombinant host cell or the recombinant host cell/plant cell/plant tissue/plant/harvest part/propagation material produced.

Group IV, claim(s) 18, drawn to a process for production of a Rpi-blb2 polypeptide.

Group V, claim(s) 19-20, drawn to a Rpi-blb2 protein.

Group VI, claim(s) 21, drawn to an antibody against Rpi-blb2 protein.

Group VII, claim(s) 32, drawn to a method for identification of a compound stimulating resistance to a plant pathogen.

Group VIII, claim(s) 34-35, drawn to a diagnostic composition or kit.

Group IX, claim(s) 36, drawn to a method for production of a plant crop protectant.

The inventions listed as Groups I-IX do not relate to a single general inventive concept under PCT Rule 13.1 because, under PCT Rule 13.2, they lack the same or corresponding special technical features for the following reasons:

The technical feature linking the inventions of Groups I-IX is a Rpi-blb2 polypeptide. However, this polypeptide is anticipated by Song et al (August 5, 2003 PNAS 100:9128-9133; also July 15, 2003 GenBank Accession No. AY303171). Song et al. teach RGA2 gene from *Solanum bulbocastanum* encoding a R gene of NBS-LRR class, which can confer broad-spectrum resistance to potato late blight (page 9130, the paragraph bridging the left column and the right column; also page 9131, 4th paragraph of the left column and Fig. 4). RGA2 gene is considered to encode a Rpi-blb2 protein according to the definition in pages 28-30 of the specification. Therefore this technical feature does not constitute a special technical feature as defined by PCT Rule 13.2, because it does not define a contribution over the prior art.

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Applicants are reminded that different nucleotide sequences and amino acid sequences are structurally distinct chemical compounds and are unrelated to one another. These sequences are thus deemed to normally constitute different inventive concepts.

Restriction to one of the nucleotide sequences and one corresponding polypeptide sequence of SEQ ID NO: 1-6 is also required.

Claims that do not read on the elected nucleotide sequence or polypeptide sequence will be considered withdrawn. Applicant is advised that a reply to this requirement must include an identification of the nucleotide sequence or polypeptide sequence that is selected. An election that does not identify the nucleotide sequence or polypeptide sequence will be considered nonresponsive. This requirement is not to be construed as a requirement for an election of species, since each nucleotide and amino acid sequence is not a member of single genus of invention, but constitutes an independent and patentably distinct invention.

Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

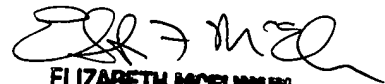
Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Li Zheng whose telephone number is 571-272-8031. The examiner can normally be reached on Monday through Friday 9:00 AM - 5:30 PM EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anne Marie Grunberg can be reached on 571-272-0975. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


ELIZABETH MCELWAIN
PRIMARY EXAMINER